

NOV 17 2003

Adoptions From The Heart®

30-31 Hampstead Circle, Wynnwood, PA 19096
(610) 642-7200, Fax (610) 642-7938
<http://www.adoptionsfromtheheart.org>
Maxine G. Chalke, MSW, Executive Director

HAGUE REGULATIONS COMMENTS

U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room, SA-29
2201 C Street NW
Washington, DC 20520

Re: Docket Number State/ AR-01/96

Adoptions From The Heart is a private, non-profit 501(c)(3) non-sectarian Agency licensed in seven (7) states with the corporate headquarters being in Wynnwood, PA. The Agency places primarily infants and young children domestically and internationally. We have 10 offices and placed 404 children from international countries in 2002 and through September 2003 have placed 245 children from International countries thus making us one of the largest agencies.

One Issue that hasn't been discussed in the regs is where an Agency that is licensed in seven (7) states will be accredited. AFTH has an Administrative office in Pennsylvania where the Executive Director, Director of Business Services, Director of Communication are located. Our Director of Social Services works out of her home in NJ and supervises all of the supervisors. We assume that we would be accredited in Pennsylvania but the issue of licensing in multiple states has not been addressed.

Before we begin our comments, I would like to request that the revised regulations be republished in draft form before they become final. If there is no second draft and the regs, as they stand go through, there will be no need to accredited agencies as they will drop out of international adoption with Hague countries. With this said the following are our comments:

Branch Offices

30-31 Hampstead Circle, Wynnwood, PA 19096 • 800 Main Street, Suite 101, Hellertown, PA 18055 • 4331 N. Front Street, Harrisburg, PA 17110
1525 Oregon Pike, Suite 402, Lancaster, PA 17601 • 451 Woodland Avenue, Cherry Hill, NJ 08002 • 18A Trolley Square, Wilmington, DE 19806
9 Claremont Drive, Greensburg, PA 15601 • 401 Grand Central Station Drive, Suite 7014, Morgantown, WV 26505
P.O. Box 16255, Chesapeake, VA 23325 • P.O. Box 375, Colchester, CT 06415

Sections that will eliminate many (if not all) agencies follows:

96.33 (g) There is no need for a "risk Assessment" to evaluate the risks of overseeing other unrelated agencies in the U.S. and overseas as it is obvious that this a risk that would not be worth taking if the accredited agency wanted to continue to provide adoption services as a non-profit corporation, under a limited budget.

96.33 (h) Adoptions From The Heart agrees that agencies should carry a minimum of \$1 million dollars worth of liability insurance. In fact, in this litigious society this may not be enough to cover the damages that adoptive families may claim for pain and suffering because the child they adopted did not meet their standards and developed or had a medical or emotional problem that they had not bargained for. In addition, the cost continues to escalate and every year it becomes more difficult to find a company to ensure adoption agencies. We recommend that the State Dept. find a carrier that would be willing to assume this risk but know that this will never be possible if the agency has to bear the liability of outside entities here and overseas as proposed in 96.45 and 96.46.

AFTH has just had our Errors & Omission fee increased by \$40,000/year and we have had no claims. Adoption agencies as non-profits, deserve protection from liability. Many states have protection in the form of immunity from liability for their own liability for their non-profits.

96.39 (d) The no blanket waiver provision. This needs clarification as educating clients as is being done now and will be required educates families about the risks involved in adopting a child whether in the U.S. or overseas. States that no blanket waiver of liability may be presented to the prospective family. This term needs to be clarified because agencies must have families sign agreements which state the inherent risks of international adoption (AFTH encloses their current Risk section from our Vietnam Program, which is

currently on hold). Adoptive parents are informed and educated that there are no "guarantees" in any adoption, whether domestic or international. With an International adoption, it is particularly noteworthy that medical tests are done by physicians and clinics who do not have the sophistication that American's enjoy. Therefore, the test results, diagnoses, etc. may not be accurate and the parents are informed of this risk. We, at Adoptions From The Heart, would not consider this a "blanket waiver". Therefore, we need this defined so that a family would not construe it as being such.

96.48 Requires that prospective parents be adequately prepared and informed of the risks of international adoption and the conditions the children live under which may determine their physical, mental and emotional well-being. We agree with this section. However, the above "blanket waiver", without a listing of the risks, seems to negate this training.

96.45(c 1,2) Requires accredited agencies to be legally responsible for the acts of their supervised providers. This is an unreasonable regulation. Families will contract with their own private supervised providers who may or may not be ethical or competent. Accredited agencies do not have the time or resources to check out the entire structure of these organizations and should not and cannot be responsible for the actions of a non-related corporation or company. We are attaching a letter from our Insurance broker, that he obtained after speaking to our Errors and Omission carrier, that they will not insure us for occurrences that a separate agency in the U.S. and certainly not for the acts of anyone overseas. How could an agency be responsible for work done in a foreign country, with foreign staff with cultural and language differences and medical reports done in the foreign country? This is impossible.

96.46 Using Supervised Providers in other Convention countries. This needs clarification. Only someone in the same country can supervise or be legally responsible for someone else in that country. A U.S. Agency would have no jurisdiction

over an overseas provider. In addition, if the central authority is to assign children and oversee adoptions, why would there need to be a Provider in an overseas country? The State Dept. has to be aware that no insurance carrier would cover acts of anyone overseas so this entire section should be eliminated, particularly the term "supervised provider". Currently there are lawyers who assist with adoptions in some countries and escorts or lay people who do the same. We work with 10 countries and none of them have organizations or groups that work with our families – only individuals acting on their own.


Recommended Changes

- 96.5 There is a concern the current accrediting group (COA) will have a total monopoly on accrediting. This will cause a huge delay on completing the task, etc. We recommend adding or proposed organization in the sentence.
- 96.21 Choosing an accrediting entity. Again, there has to be a choice and the term "Geographical region" implies that an agency or person is stuck with one in close by to their office. This needs to be clarified.
- 96.33 What does an "independent professional assessment of risks" mean?
- 96.33(g) Recommend the following language: (g) The agency or person conducts a professional assessment of the risks it assumes, and includes the availability of coverage, cost, and the requirements of (h) in this section, as the basis for determining clients. (delete remainder of sentence)
- 96.35(b)(4,5,6) The number of years should be changed to 5 years and (5) should include substantiated before written complaint(s).

- 96.37 (f) Qualifications for employees who conduct home studies. This should read the same as (e) for non-supervisory employees.
- 96.38(a)(3) How could an agency or person educate their staff about the laws in another country. It is difficult enough to educate them about the state, local and federal laws here. Laws in other countries are often written in another language and change frequently. This should be eliminated.
- 96.38 (c) Instead of 20/hours/year, it should be 30 hours every 2 years.
- 96.40 (b) Needs to say "estimated" expenses as they have not occurred yet.
- 96.40 (b)(2) This is not clear. The first part stating adoption expenses in the United States. The expected total fees and expenses for all adoption services other than the home study that will be provided in the United States." Is fine but we do not agree with informing clients the costs of our personnel costs, administrative overhead, training and education, communications, etc. This is in our Annual Report but should not be a part of a Fee Schedule (enclosed find a sample of a fee schedule that we use).
- 96.40(f)(3) This section should say "provides written receipts to the adoptive parent(s) for total fees collected directly by the agency in the Convention country....."
- 96.49(e) An Agency cannot guarantee the accuracy of medical information gathered from overseas. This section should say "If the agency or person provides medical information, separate from the information provided by the convention country, to theshould include as reasonable efforts allow.
- 96.49 (f) This should also state within the confines of the convention country's laws and procedures.....

- 96.49 (k) Needs to say if available at the end as most counties do not send videos. Only E. European countries do at this time.
- 96.76 (b) In the middle of the second sentence it should be added "approved person about the deficiency in advance (such in a case of clear and convincing evidence of imminent danger to a child), the accrediting"
- 96.103(b) This is not a fair statement as how can an accredited agency be expected to pay additional fees just because the accrediting entity wants to make a site visit. They must be a good reason for the visit and an agreement on the part of the agency as to the fee.

Thank you for taking the time to consider our suggestions and comments.


Maxine Chalker, MSW/LSW
Founder and Executive Director

KVIS

Hamberley Vassal Insurance Services, Ltd.

Adoptions From the Heart
30-31 Hampshire Circle
Wynnewood Pa. 19096

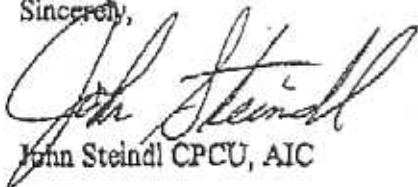
Dear Maxine:

As you are aware, the current availability of Adoption Agency Errors and Omissions Insurance is very limited. After approaching several markets that in the past provided this coverage only 2 are still entertaining this class. It is for this reason that you must continue your strict controls over all phases of the adoption process.

The new Hague Regulations if passed will greatly increase your liability exposure for the actions of subcontractors for which you have little or no control over how they perform their jobs. This type of regulation would make your insurance coverage respond to errors made by such subcontractors as Home Study Agencies who may be hired by the adopting parents and facilitators in foreign countries.

The effects of this type of irresponsible regulations would be, your current insurer will withdraw from the Adoption Agency Errors And Omissions marketplace which will mean loss of coverage for you and many well managed Adoption Agencies..

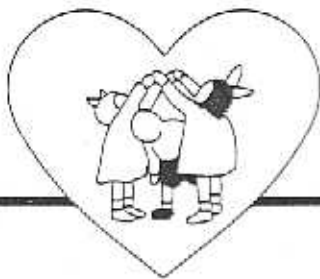
Sincerely,



John Steindl CPCU, AIC

insurance

115 Commons Court • Chadds Ford, PA 19317 • Office: (610) 459-4444 • Fax: (610) 558-0379



Adoptions From The Heart®

EXHIBIT A

DISCLOSURE OF RISKS/ASSUMPTION OF RISKS AND HOLD HARMLESS & RELEASE OF LIABILITY OF ADOPTIONS FROM THE HEART (AGENCY)

Please read this agreement slowly and carefully. If you have any questions or concerns please discuss them with an agency representative, attorney of your own choice and/or with an advisor of your choice. However, please be advised that this contract will not be changed or altered.

Many Prospective Adoptive Parents from the United States decide to go to other countries to adopt. The reasons are many but the main ones are that infants and toddlers are readily available, they need loving families, and there is little chance that birth parents can reclaim the child once the adoption has been completed.

International adoption by its nature involves risks and various benefits. The agency has disclosed, and the Adoptive Parent(s) have discussed and evaluated, various risks and benefits connected with international adoption. The Adoptive Parents have independently discussed and researched the risks of international adoption with third parties, such as friends, family, community support groups, religious advisors and/or persons who have completed adoptions. The Agency can make available and provide names of various persons who have completed adoptions to the parents and encourage the parents to communicate with other Adoptive Parents who have adopted children from Vietnam.

Assumption of Risk

After being made aware of the risks and benefits connected to international adoption, and after carefully considering and evaluating those risks and benefits, the Adoptive Parent(s) have determined that the benefits to be gained from the adoption outweigh the risks and that they, the Adoptive Parents, will accept all risks connected to the adoption. Even if the Agency acts reasonably and reliably, it is possible that accidents, omissions and uncontrollable events will occur, as the process of international adoption involves inherent risk. The Adoptive Parents understand that they themselves, not the Agency, are taking full responsibility for the risks connected to the adoption. Taking responsibility for the risks includes taking the risk that if something happens, before, during or after the adoption, Adoptive Parents are solely financially responsible to solve the problem, including, but not limited to child development issues, undisclosed illness, accidental injury or death. We understand that the Agency can not control all aspects of the process, nor assure a successful outcome. The Adoptive Parent(s) cannot look to the Agency for financial compensation or monetary damages if something negative occurs.

Many risks are detailed and discussed in this Agreement. Even if a risk is not discussed specifically in this Agreement, it is still covered by the Agreement because it is intended that this

Agreement covers all risks connected to travel, adoption, development and the health of the child and its family. The Agency can not guarantee neither the completeness nor the accuracy of any information received from third parties or other sources.

After careful and adequate thought, review and reflection and in consideration of the services provided by Agency, the Adoptive Parents have willingly signed this Agreement hereby releasing the Agency, its employees, directors, officers, and agents and/or consultants from any and all liability whatsoever for any illness, disease, physical or mental condition, injury, developmental delay or problem, event or negative consequence which arises from or is in any manner connected to the adoption, now or in the future. We further agree to hold the Agency, its employees, directors, officers and agents and/or consultants harmless against any claims known and unknown, now or existing in the future, which may arise out of this adoption.

In consideration of services provided, the parties signing this document (including a travel companion) hereby hold harmless and release *Adoptions From The Heart* and any or all persons employed by or associated with the agency, including but not limited to Directors, officers, agents of, consultants to, from any liability for any non-contractual and unintentional act or omissions before, during or after or otherwise arising from the adoption in Vietnam and related travel and activities. This Agreement is also intended to bind the minor child adopted by the parents and extinguishes claims, if any, which the child may have.

Medical Report and Health of the Child:

The Agency will not deliberately or willfully withhold information concerning the adoptive child. The Agency will provide a medical report, which is provided by medical facilities in Vietnam. The Agency is not responsible for neither the completeness nor the accuracy of the report or for errors or omissions contained in the report. The Agency is not responsible if the medical report and blood tests if any included in the report contains a misdiagnosis or if a report fails to disclose a medical condition. The Agency is not responsible for any medical condition, which develops before, during or after the adoption. Adoptive Parents understand that if a medical condition arises after the finalization of the adoption, the child cannot be returned to Vietnam or the Agency. The Adoptive Parents accept the risks and waive any and all claims that they may have now or in the future against the Agency and agree to hold it harmless for any expenses or damages connected to any disease, medical condition, developmental problem or mental or physical illness of the adoptive child whether occurring prior to or subsequent to the adoption in Vietnam.

Health of Parents:

The Agency is not responsible for the health or well-being of the Adoptive Parents, persons accompanying the Adoptive Parent and the adoptive child while they are traveling to, in and from Vietnam. The Adoptive Parents have discussed/will discuss the trip with their doctor and have been informed by their doctor that they are medically capable of taking this trip which involves the stresses of a flight to Vietnam, jetlag and travel in Vietnam. Adoptive Parents, under doctors guidance have prepared for the trip, received necessary inoculations and have prepared.

necessary medical supplies and medication in sufficient quantities for their own needs in Vietnam, even if it becomes extended. Medical devices requiring electric power may become inoperable due to power failures, unreliable power supplies, electrical current which differs from electrical current in the United States, damage to or loss of the device, etc. Adoptive Parents, having notice of this potential, have investigated any options available to them and assume all risks to their personal health in such event.

Risks During Travel:

At various points in the adoption process, Adoptive Parents stay in hotels, eat in restaurants, use cars, vans, trains, planes, must walk and carry baggage and the child. Even though a party employed by and/or associated with the Agency arranged for or scheduled the flight, hotel, restaurant or transportation, the Agency are not responsible for any delays, personal injury, accident, illness, allergic or other reaction which occurs. This does not limit the right of the Adoptive Parents to directly bring an action against the airline, driver, hotel, railroad, etc.

Example: In the event of a car or van accident in Vietnam, the Adoptive Parents may not sue the Agency for damages. The Adoptive Parents may pursue damages from the car driver/owner.

Medical Care in Vietnam:

Notwithstanding the fact that a party employed by and/or associated with the Agency recommends or introduces the parents or child to medical facilities in Vietnam, the Agency is not responsible for the quality of care received or for injuries or damage which might be caused by any medical care provider. If medical care is required in Vietnam, the Adoptive Parents accept the risks connected with receiving care, treatment, procedures and medication in Vietnam whether for parent or child.

Adoptions From The Heart cannot vouch for the accuracy of any medical tests administered to their child in Vietnam as the tests are performed in the foreign country, according to their standards and medical expertise available. *Adoptions From The Heart* cannot be held responsible for any undiagnosed medical conditions which may be undetected or arise after placement.

This provision does not limit any right of the Adoptive Parents, which may exist to sue the doctor or hospital in Vietnam, which provided the medical care.

Criminal Acts:

The Agency is not liable or responsible if the Adoptive Parents or adopted child are the victim of a criminal act while in Vietnam or while traveling to or from Vietnam.

This does not limit your rights to file criminal charges against a perpetrator in the appropriate jurisdiction.

Delay:

The Agency is not responsible for any costs resulting from delay or rescheduling in the adoption process which may occur before, during or after the trip. The Adoptive Parents are solely responsible to pay all costs connected to delay or rescheduling such as additional hotel costs, cost of rebooking tickets, cost of supplemental travel arrangements, their loss of work, etc.

Change of Government/Act of God:

The Agency is not responsible for costs or damages arising from any change of government policy, war, terrorism, act of God or natural disaster.

Miscellaneous Risks:

International adoption is subject to the laws, regulations and governments of another country. The Agency has no control over either the government of Vietnam or the United States government's approval. The US has no power to influence decisions in these countries and therefore, agencies (and their clients) must be flexible and patient. Some of the risks that you should be aware of are as follows:

1. A foreign country can change its laws, policies or regulations regarding adoption without notice or warning.
2. Your documents can get lost.
3. The child you are matched with can become ill and you may not want to pursue the adoption before you leave the United States or once you get to your international destination.
4. Agency cannot vouch for the accuracy of the medical information it provides you since it is obtained from a physician overseas. However, all medical information available is given to you and Agency attempts to have the most competent evaluations that it can obtain.
5. The foreign country can decide to suspend adoptions either permanently or temporarily at any time.
6. Communication can be difficult because of the differences in language, culture and time.
7. The concept and importance of "time" is different in foreign cultures from ours.
8. Background medical and/or social information on the child is usually not available.
9. The political climate in the country may change and you may decide that travel to that country is not wise.
10. Laws and regulations in the other country may change which would require that you stay longer in the country, that your spouse (if he/she has left) may have to return, that you may have to make two (2) trips, etc.
11. The future mental and/or physical health of the child as well as the educational ability of the child cannot be guaranteed. This is true, of course, in any adoption.

12. An adoption match can be withdrawn with no explanation given by the international country.
13. An adoption may take longer than originally planned.
14. The fees originally quoted to the Agency for "in-country" expenses may change, because the Agency has no control over these fees.

Oral Statements Cannot Change This Agreement:

No oral statements by the Agency, its employees, associated parties or representatives can alter this Agreement. This Agreement can be modified only in writing by a party specifically authorized to modify the Agreement.

Interpretation:

No statement contained in any Agency brochure, travel guide, contract or other written material shall limit or restrict the scope of this Agreement.

Validity:

If one clause or statement in this Agreement is found to be invalid, all remaining statements, clauses and agreements remain binding and valid.

Conclusion:

This broad release from liability is not typical and must be carefully read and understood. The Agency and Adoptive Parents understand that there are risks involved in international adoption. The Agency has taken reasonable steps to discuss and manage risk. The Adoptive Parents have agreed that after evaluating the agency and its program that they, the Adoptive Parents, will accept any and all risks involved in the process and be fully responsible for the consequences of the adoption.

Please sign this document to indicate that you have read and understand the risks that you are taking by pursuing an international adoption.

Date: _____

Signature

Signature

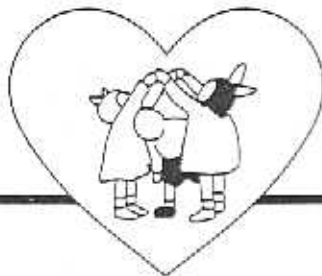
Travel Companion

Signature

Adoptive Parents on Behalf of Infant/Child

Signature

Signature



Adoptions From The Heart®

ADOPTIONS FROM VIETNAM FEE SCHEDULE

Agency Application.....	\$ 400
Home Study and International Education Course.....	\$ 1,100
(travel fee for home study (\$30/half hour after 1 hour free)	
Update home study.....	\$400/\$600
Review of Current home study & Education course.....	\$600
Review of current home study (out-of-state families).....	\$300
New home study if original is more than 3 years old.....	\$600/\$800
In-Country Fees.....	\$11,300
Vietnam Placement Fee.....	\$ 10,500
Orphanage Fee.....	\$ 200
Birth Center Fee.....	\$ 200
Alternative Care Fee.....	\$ 400
Agency and Facilitator Services in U.S.....	\$ 7,000
(Payable \$2,000 earned immediately, \$2,500 at time of child match, \$2,500 at placement)	
Subsequent Placements.....	\$6,300
Post Placement (one) Supervisory Report.....	\$ 250
Total Adoption Fees.....	\$ 20,050

Additional Costs to Adoptive Parents (Estimated)

BCIS Application Fee & Fingerprinting.....	\$510/single parent or \$560/ couple
Airfare (round trip for two to Ho Chi Minh City-subject to seasonal variations)	\$ 1,800
(*first trip* approximate round trip for one)	\$ 900
Visa for one to Vietnam.....	\$ 65
State Certification of dossier documents.....	\$ 135
Dossier preparation fees (for one, varies).....	\$ 940
Hotel in Vietnam (approx. \$90/night/15 days).....	\$ 1,260
Hotel in Vietnam (*first trip* approx. \$75/night/3 days).....	\$ 225
Child's airfare - (one way, approx. depending on season).....	\$ 200
Visa fee for child from Vietnam to US.....	\$ 335
Medical exam in Vietnam.....	\$ 75

This is a good faith estimate of charges, deemed reliable, not guaranteed and is subject to change without notice.

Over

Additional Costs That May Apply:

Additional fees for adopting 2 children at the same time (twins):

Agency and Facilitator fees (regular fee increased by 50%)..... \$ 3,500

In-Country Fees (regular fees are doubled) \$11,100

**please note that all fees pertaining to the child (visa, medical exam, airfare) are for one child, and therefore will be doubled for two children

For New Jersey residents only: NJ fingerprint processing fee..... \$ 25

Processing fee if only one spouse travels (includes a meeting with family) \$200

Re-finalization costs (optional) (per state requirements)

Post-placement reports..... \$250

Court report (if required)..... \$250

Social worker required at court hearing..... \$300

Legal Fees (charged by agency attorney or attorney of your choice)